

FILED
CLERKS OFFICE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
BOSTON DIVISION

JUL 26 2006 P 3:47
U.S. DISTRICT COURT
DISTRICT OF MASS.

Docket No. 1:03-CR-10383-02-RGS

DOMINGO VEGA,

Petitioner,

- against -

UNITED STATES OF AMERICA, and

SARAH ALLISON THORNTON - Clerk of the Court,

JAMES GIBBONS - Court Reporter,

Respondents.

PETITION FOR WRIT OF MANDAMUS

COMES NOW DOMINGO VEGA, Pro-Se, Petitioner in the above cited case, and respectfully petitions this Honorable Court for a Writ of Mandamus, pursuant to 18 U.S.C. § 3742 and 28 U.S.C. § 753, commanding the Clerk of the Court and the Court Reporter to fulfill their mandated duties pursuant to the Constitution of the United States and statutory law, and provide the Petitioner with copies of the record specifically designated by the Petitioner herein.

The Petitioner respectfully avers that he has a clear and legal right, under the Due Process and Equal Protection Clauses of the United States Constitution, as well as the Sixth Amendment, statutory construction and supporting Supreme Court precedent, to provision, at the Government's expense, of the portions of the record that will permit proper consideration of his meritorious claims raised pursuant to 28 U.S.C. § 2255.

The Petitioner further avers that the afore-mentioned constitutional rights, statutes and Supreme Court precedent, create a corresponding duty in the Respondents to provide the portions of the record needed to perfect his appeal, pursuant to 28 U.S.C. § 2255, an appeal of a criminal conviction, without prepayment of fees.

The Petitioner respectfully avers that he has made numerous attempts to obtain these portions of the record from the Clerk of the Court and the Court Reporter, both through written and telephonic communication, but despite his efforts neither the Clerk of the Court nor the Court Reporter has been forth-coming in providing these transcripts and records. This lack of response from the Respondents compel no-other remedy but Mandamus, outside of civil action.

The Petitioner seeks the following transcripts and records to perfect his appeal, pursuant to 28 U.S.C. § 2255:

1. Pre-trial Transcripts
2. Plea Agreement
3. Plea Colloquy Transcripts
4. Sentencing Transcripts
5. Full Docket Sheet

The Petitioner further avers that pursuant to 28 U.S.C. §§ 735(f), which states in pertinent part:

"Fees for transcripts furnished in criminal proceedings to persons proceeding under the Criminal Justice Act, 18 U.S.C. § 3006A, or in habeas corpus proceedings, to persons allowed to sue, defend or appeal in forma pauperis, shall be paid by the United States out of moneys appropriated for those purposes."

(See: 28 U.S.C. § 753(f)).

The records that must be provided to an appellant proceeding in forma pauperis, do not extend to merely to transcripts of hearings before the Court, but to any relevant portion of the record that is necessary to support an argument on appeal. That principle has been reinforced by innumerable Supreme Court precedent since Griffin v. Illinois, 351 U.S. 12, 100 L.Ed.2d 891 (1956). It was perhaps best stated in Mayer v. Chicago, 404 U.S. 189, 30 L.Ed.2d 372, where the Court held:

"In terms of a trial record, this means the state must afford the indigent a record of sufficient completeness to permit proper consideration of his claims."

(See: Id.)

In support of this Writ of Mandamus, the Petitioner submits the attached Petitioner for In Forma Pauperis.

WHEREFORE, the Petitioner respectfully prays that this Honorable Court will look favorably upon the content of this Petition for Writ of Mandamus and order the Clerk of the Court and the Court Reporter to fulfill their mandated duties and provide the Petitioner with the portions of the record and transcripts he requests herein so that he may perfect his appeal pursuant to 28 U.S.C. § 2255, and further prays that this Honorable Court will grant such other relief as it deems just and proper.

REQUEST TO HOLD IN ABEYANCE

That defendant respectfully request that this most Honorable Court HOLD defendant motion 28 U.S.C. Section §2255 IN ABEYANCE.

That Section 101 and 105 of the A.E.D.P.A. create a New-one Year time period within which State and Federal Prisoner must file any collateral attacks in the Federal Courts.

That the transcripts of all legal proceedings is to defendant effective preparation and adequate presentation of litigation Pursuant to the due process of law U.S. Const. Amend. V).

That defendant submit that him is entitled to obtain transcripts of all proceedings Pursuant to Title: 28 U.S.C. §1915.

That the interest of Justice requires that this Court authorized official court reporter for the District Court of Massachusset to prepare and deliver forthwith complete transcripts of all legal Proceedings in the above captioned case at the expense of the United States and HOLD DEFENDANT MOTION 28 U.S.C. §2255 IN ABEYANCE.

Respectfully Submitted



DOMINGO VEGA
Pro-Se, Petitioner
Reg. No. 24994-038
LSCI ALLENWOOD
P.O. BOX 1000
WHITE DEER, PA 17887